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13 Attorneys for Defendant Signature TEAM, Inc.

14 UNITED STATES DISTRICT COURT

15 DISTRICT OF NEVADA

16 QUIXTAR, INC.,) Case No. 3:07-cv-00505
17 Plaintiff,)
18 v.)
19 SIGNATURE MANAGEMENT)
20 TEAM, LLC, d/b/a TEAM,)
21 Defendant,)
22

**SECOND AMENDED
PROTECTIVE ORDER**

23 IT IS HEREBY ORDERED, all documents and information produced in this case are
24 subject to the following protections:

25 **I. SCOPE:**

26 A. This Protective Order shall apply to all information, documents and things
27 within the scope of discovery of this action that are in the custody or possession of the
28

1 Parties which is properly designated as "Confidential Material" pursuant to the following
2 provisions by the Party producing the information including, but not limited to, documents
3 and things responsive to requests for production of documents, responses to written
4 interrogatories, responses to requests for admission, testimony adduced at depositions, and
5 hearing or trial transcripts.

6
7 The Parties shall label or mark documents and things that constitute or contain
8 Confidential Material with the legend "CONFIDENTIAL MATERIAL" or
9 "CONFIDENTIAL". Documents and things that constitute or contain Confidential Material
10 shall be labeled or marked with the appropriate legend when the document or thing is
11 produced to the Party or Parties seeking discovery. The designations of "CONFIDENTIAL
12 MATERIAL" or "CONFIDENTIAL" by a Party constitutes the representation of the Party
13 that it reasonably and in good faith believes that the designated material constitutes or
14 discloses one of the following:

- 15
16 a) Files of specific Amway and Quixtar "dispute resolution" cases
17 including formal and informal conciliation and arbitration;
18 b) Sensitive personal, business or commercial information that is not
19 publicly available;
20 c) Information received by a Party from a third party subject to a
21 protective order or under a bona fide obligation of confidentiality; and
22 d) Trade secrets, know-how, proprietary data or commercial information
23 (including, but not limited to, customer and supplier lists, and pricing
24 information) within the meaning of Rule 26(c)(1)(G) that has previously been
25 maintained in confidence, or, if newly created, will be maintained in
26 confidence.

27 Documents and things produced without a legend designating the material
28 confidential shall not be Confidential Material subject to this Protective Order unless agreed
by all Parties or ordered by this Court, or otherwise designated confidential in accordance

1 with the provisions of Paragraph A of this Protective Order. Confidential Material does not
2 include information, documents, or things obtained in this action that are (a) in the receiving
3 party's possession or (b) publicly available. Furthermore, the disclosing party may designate
4 as "Attorneys' Eyes Only" (hereinafter "Attorneys' Eyes Only") information believed in
5 good faith to contain or constitute any of the following types of non-public information:
6

- 7 a. Strategic plans and internal and external analyses of pricing or sales
8 performance of any party or any affiliate of a party; or
9
- 10 b. Financial data, records, and reports, and tax returns of any party; or
11
- 12 c. Line of Sponsorship compilations or lists, in whole or in part, except
13 the identities of witnesses expected to testify or identities already known to the
14 receiving party;

15 The parties agree that the following limitations shall be imposed on the disclosure of
16 Confidential Material and/or Attorneys' Eyes Only Information.
17

18 B. Confidential Material and/or Attorneys' Eyes Only Information received by
19 any person or party entitled under the terms of this Order to access such Confidential
20 Material and/or Attorneys' Eyes Only Information shall not be disclosed and shall not be
21 used for any purpose other than prosecution or defense of this action; provided further that
22 specified categories of Confidential Material and/or Attorneys' Eyes Only Information may
23 be used in the following related arbitration or litigation proceedings provided that a
24 confidentiality order substantially similar to this one applies:
25

- 26 • *Quixtar v. Woodward et al.*, JAMS No. 1100052219.
27

- *Quixtar v Orrin Woodward et al.*, No. 07-084313-CK (Kent County, Michigan State Court).

In the event any information subject to this Order is included with, or the contents thereof, are in any way disclosed in any pleading, motion, deposition, transcript, or other paper filed with a court of law, such Confidential Material and/or Attorneys' Eyes Only Information shall be filed under seal in accordance with the local rules of the court.

C. Nothing contained in this Order shall be construed to affect or govern the scope of discovery and/or the admissibility of evidence in this action, or to preclude any party from moving the Court for a further order defining the scope of discovery available in the action and/or the admissibility of evidence in this action.

D. Nothing contained in this Order shall be construed to require production or disclosure of any Confidential Material and/or Attorneys' Eyes Only Information deemed by counsel for the party possessing such material to be protected from disclosure by either the attorney-client or the attorney-work product privileges, so long as the withheld materials are adequately identified and described by the party asserting the privilege(s).

E. The inadvertent production of privileged or work product documents will not waive the privilege or work product protection. Upon notice by the disclosing party and upon a showing of privilege, together with a showing of inadvertent production, the non-producing party shall immediately return the originals and all copies of the privileged documents or things, unless the non-producing party disputes the producing party's showing of privilege or inadvertent production. If the non-producing party disputes the producing party's showing, the non-producing party may retain one copy of the documents or things,

1 pending hearing. Within 10 days after receipt of the producing party's notice, the non-
2 producing party that disputes the showing of privilege must file a motion with the Court to
3 compel production of the documents or things. The producing party shall have the burden of
4 showing privilege and inadvertence. From receipt of the producing party's notice, and until
5 the Court resolves any such motion, the non producing party shall maintain the documents or
6 things in a manner that they are available only to counsel, and to the exclusion of the parties.
7
8

II. **TERMS OF PROHIBITION:**

F. Confidential Material shall be revealed only to (1) the Court; (2) officers, directors, and employees of a party in this litigation; (3) counsel for the parties in this action and designated in house counsel who have signed this Order;¹ (4) such counsel's paralegal, secretarial and clerical staff (including shorthand reporters) assisting such counsel, and computer technicians, (5) testifying experts or non-testifying consultants who are retained by such counsel to assist in this arbitration; (6) employees of CNA Insurance and/or other representatives of CNA Insurance who have been designated as the outside firm to review billing and work product of assigned counsel; and (7) any witness who testifies in a deposition or at the hearing; provided that the witness may only see Confidential Material directly pertinent to the witness' testimony. However, absent written agreement from the party producing the Confidential Material or order from the Court, no party receiving Confidential Material from another party may disclose the Confidential Material to any

¹ The Confidential Material or Attorneys' Eyes Only Information shall not be disclosed to or discussed with any Shughart Thompson lawyer or employee who is working on the *Nitro Distributing et al. v. Alticor et al.* federal lawsuit, the related state court lawsuits, or the arbitrations and lawsuits involving Ken Stewart, Brig and Lita Hart or their Quixtar distributorships (collectively "the Nitro litigation").

1 expert witness or consultant who is employed by, or affiliated with, a competitor of the
2 producing party, including (for purposes of this protective order only) any other direct sales
3 program using a multilevel or “network” marketing structure or any other enterprise that
4 markets, through independent distributors, products or services functionally interchangeable
5 with those offered or marketed by Quixtar or TEAM, unless the party seeking to disclose
6 gives the owner of the Confidential Material ten days’ written notice identifying the
7 Confidential Material to be disclosed and a general description of the competitor by which
8 the expert witness is employed or affiliated. “Affiliated” means that the expert witness has
9 substantial ongoing managerial responsibilities for the competitor, or direct or indirect
10 control of the competitor. A competitor’s outside accounting firms and auditors, law firms,
11 construction general contractors, etc. are not “affiliated” within the meaning of this
12 paragraph.

16 G. A document designated as Attorneys’ Eyes Only Information and stamped
17 “Attorneys’ Eyes Only” and the information contained therein shall be revealed only to
18 (1) the Court; (2) counsel representing the parties in this action and designated in house
19 counsel who have signed this Order; (3) such counsel’s paralegal, secretarial and clerical
20 staff (including shorthand reporters) assisting such counsel and computer technicians;
21 (4) employees of CNA Insurance and/or other representatives of CNA Insurance who have
22 been designated as the outside firm to review billing and work product of assigned counsel;
23 (5) expert witnesses and non-testifying consultants who are retained by such counsel (and
24 excluding any expert witness or consultant who is employed by, or affiliated with, a
25 competitor of the producing party); and (6) a witness who testifies in a deposition or at the

1 hearing, provided that the witness may only see "Attorneys' Eyes Only" information directly
2 pertinent to the witness' testimony, and may not make any copies or notes. "Competitor"
3 and "Affiliated" mean the same as they do in Paragraph G above. A party may challenge an
4 "Attorneys' Eyes Only" designation, and if the designating party does not withdraw the
5 designation within 3 days, the parties will seek a ruling from the Court at the Court's earliest
6 convenience. The prevailing party in such a challenge shall be entitled to attorneys' fees to
7 the extent the Court believes such fee-shifting is appropriate in the particular situation. If
8 the Court sustains the challenge, the document or information will not be treated as
9 "Attorneys' Eyes Only".

12 H. With the exception of: (1) the Court; (2) counsel representing the parties in
13 this action and designated in house counsel; and/or (4) paralegals or secretarial employees
14 under the direct supervision of such counsel, each person who reviews or inspects
15 Confidential Material and/or Attorneys' Eyes Only Information shall sign a copy of the
16 attached Affidavit . Each person's signature shall be notarized by an officer authorized to
17 administer oaths. No person entitled to access to Confidential Material and/or Attorneys'
18 Eyes Only Information shall disclose or discuss the existence or contents of any such
19 materials with any other individual, or entity, except those individuals who are also
20 permitted by this Order to view, inspect, or receive the Confidential Material and/or
21 Attorneys' Eyes Only Information.

25 I. Counsel for the parties shall maintain a list of all persons (with the exception
26 of: (1) the Court; (2) counsel representing the parties in this action and designated in house
27 counsel who have signed this Order; and (3) paralegals or secretarial employees under the

1 direct supervision of such counsel) who inspect or review Confidential Material or who
2 receive any copies or any version of Confidential Material and will make such a list
3 available to counsel for the other parties within thirty (30) days of the conclusion of this
4 action or any post-action proceeding in a court of law, if any. The parties and their counsel
5 shall also certify to the Court their compliance with this Order at the conclusion of this
6 action.
7

8 J. If Confidential Material and/or Attorneys' Eyes Only Information is disclosed
9 to or comes into the possession of any person other than in the manner authorized by this
10 Order, any party becoming aware of such disclosure shall immediately inform the party
11 which originally produced the Confidential Material and/or Attorneys' Eyes Only
12 Information of all pertinent facts relating to the unauthorized disclosure and shall instruct
13 each unauthorized person to treat such information as confidential in accordance with the
14 terms of the Order and demand that it be returned immediately.
15

16 K. If a party receives a subpoena or other legal process which calls for disclosure
17 of any materials designated as Confidential Material and/or Attorneys' Eyes Only
18 Information by another party, or for disclosure of any information contained in such
19 Confidential Material and/or Attorneys' Eyes Only Information, the party receiving the
20 subpoena shall give prompt written notice, by fax and first-class mail, of such subpoena or
21 other legal process to counsel for the party who designated the Confidential Material and/or
22 Attorneys' Eyes Only Information in question, and shall cooperate in any reasonable and
23 legally appropriate efforts to oppose or otherwise limit production or disclosure of such
24 Confidential Material and/or Attorneys' Eyes Only Information in response to the subpoena
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1 or legal process.

2 **III. RETURN OF DOCUMENTS AND INFORMATION:**

3 L. At the conclusion of this action, or, if Confidential Material or Attorneys' Eyes
4 Only Information is being used in a related arbitration or litigation (as provided in
5 paragraph B) at the conclusion of that other arbitration or litigation, all documents and
6 materials subject to this Order, (including all copies, abstracts, summaries thereof; and all
7 documents which refer to, recount, or depict Confidential Material and/or Attorneys' Eyes
8 Only Information), shall be destroyed or returned to counsel for the producing party within
9 thirty (30) days, accompanied by an affidavit with an affirmation certifying that all material
10 has been destroyed or returned and protected in accordance with this Order.
11

12 **IV. APPLICATION TO THE COURT FOR FURTHER RELIEF:**

13 M. Nothing herein shall be construed to preclude or limit any party from opposing
14 any discovery on any grounds which would otherwise be available. Nothing in this Order
15 shall be deemed to preclude any party from seeking or obtaining, on the appropriate
16 showing, additional protection with respect to the confidentiality of documents or
17 information.
18

19 **V. ADMISSION INTO EVIDENCE:**
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21 N. The terms of this Order shall not be construed as a limitation upon the right of
22 any party to offer into evidence in this action any documents or information covered by this
23 Order. Production of the documents or information accompanied by this Order does not
24 constitute a waiver to objection to admissibility.
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VI. MODIFICATION

O. This Protective Order may not be modified except in writing signed by all parties and approved by the Court.

IT IS SO ORDERED.

17th

DATED this ____ day of July, 2009



Hon. Robert A. McQuaid, Jr.
Magistrate Judge, District of Nevada